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VIA ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Room TWA325  
Washington, DC 20554

Re: Notice of Ex Parte Presentation  
WT Docket No. 11-18; RM-11592

Dear Ms. Dortch:

The Commission must take action to resolve the problem of interoperability in the 700MHz. spectrum band and to immediately freeze the equipment authorization on equipment that can not operate on all of the spectrum frequencies in the 700 MHz band. <sup>1</sup>The build-out deadlines for the lower 700MHz. A block band licenses is just around the corner and it is important that the Commission act swiftly to implement interoperability within the 700 MHz band. The argument that it would cost too much and that the complexity of interoperability is beyond the ability of the chip manufacturers is far from the truth. The mobile telecommunications industry is divided among a few big companies who have a combined market capitalization of over \$275 billion and hold a wide and substantial edge on its smaller competitors. Apparently controlling more than 85 % of the mobile market among two big companies is not enough and have found the need to exercise their power and influence over the mobile device manufacturers and demand that devices be made that only operate on the frequency bands owned by them with the objective of delaying the competition who are faced with incompatible spectrum bands and the difficulties and availability of mobile devices that will work in the 700MHz. A block bands. This premeditated business practice of using their dominance in the market to control the development and production of mobile devices that will only work in the 700MHz. spectrum band they hold is unacceptable and a calculating attempt to suppress the competition by using its influence and power to manipulate the access and availability of mobile devices and stone-wall interoperability in the 700MHz. band. The current situation has reached the outer boundaries of anti-competitive behavior and violates the basic rules of responsible business ethics. The Commission has an obligation as regulators of the industry to enforce policies that protect fair competition in the mobile market place. The Commission must protect small business from the harmful side effects of such unfairness which undermines the very principals

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<sup>1</sup> In the Matter of Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks r700 MHz Block A Good Faith Purchasers Allianc

and objectives of the Commission to promote competitiveness in the mobile industry. <sup>2</sup>The Commission has available before it an avalanche of data and reports that supports mandatory interoperability in the 700MHz. band and has no reasons to delay a decision on this matter. The Commission has the authority to make interoperability in the 700 MHz band a reality. The unnecessary foot-dragging is preventing the network build-out plans of many rural 700MHz.band license holders. The facts are crystal clear that ensuring compatibility throughout the 700MHz band has substantial consumer benefits and will ensure that rural carriers don't get left behind the rest of the mobile industry. This non decision-making has hampered the ability of small carriers to meet its geographic performance requirements and compete on a level playing field. The ball is now in the Commission's court and we are running into overtime. The wireless industry is now being overwhelmingly concentrated and dominated by just a few nationwide behemoths. Any additional delays on interoperability is unnecessary and will have severe consequences for the smaller carriers and consumers alike. I urged the Commission to address these challenges expeditiously given the long time needed to construct a greenfield mobile network. For the benefit of consumers the Commission should take steps to ensure that smaller players have the ability to compete by adopting interoperability in the 700MHz. band. There are significant constraints on the ability of smaller carriers to compete and with out adopting interoperability in the 700MHz. band smaller carriers survival is being threatened. Consumers demand access to the latest and most advanced handsets and without interoperability in the 700MHz. band smaller carriers are at a big disadvantage. This is a opportunity to address the underlying competitive issues in wireless markets and to make sure that interoperability in the 700MHz. band becomes a reality. Interoperability is clearly in the public interest and is a prerequisite to true competition. The Commission can, and should take action immediately to solve these problems. The National Broadband Plan makes clear that the 700 MHz band will play a key role in the America's mobile communication needs. The 700MHz. band must not be handicapped at the outset by limiting access to only a handful of companies who dominate the industry. If competition and diversity are to thrive the whole 700 MHz. band must be made accessible to everyone and prohibit restrictive arrangements that are not in the public interest. <sup>3</sup>The FCC own recent estimates indicate that the nation is running out of spectrum and will experience a spectrum deficit starting in 2013. <sup>4</sup>Increasing the amount of radio spectrum is important in order to meet public demand. Interoperability in the 700MHz. band is necessary in order to optimize the spectrum that has already been granted. Instead we have been wasting very valuable spectrum by not having interoperability in the 700MHz. band waiting for the relief sought by the alliance. The Commission has a long track record of prohibiting other restrictive arrangements that become obstacles to competitive access in the telecommunications market. The Commission has the authority to address discriminatory and anti-competitive practices under the Communications Act, and it should do so as soon as possible. Exclusivity arrangements, which prevent small wireless carriers from being able to obtain many wireless devices, the restrictive banding arrangements and procurement practices that have emerged in

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<sup>2</sup>The NRIC VII was composed of approximately 40 senior telecommunications industry representatives who spent numerous hours and and significant expenses and extensive effort working on these issues over a period of 2 years on this report. A primary motivator behind the charter for NRIC was the FCC's conclusion that it is compelled to play a role in fostering timely, fair, and open development of standards for current and future technologies. The FCC concluded that a Federal Advisory Committee (FAC) was the appropriate forum to advise it on spectrum compatibility standards and spectrum management practices to ensure the competitive deployment of advanced services and technologies to their customers.

<sup>3</sup> Point of View: Wireless Point of Disconnect by Michael Kleeman October 2011GIIC Global Information Industry Center School of International Relations & Pacific Studies University of California San Diego

<sup>4</sup> Auction of 700 MHz Band Licenses Closes Public Notice, DA 08-595, released March 20, 2008.

the 700 MHz band promise only to widen the competitive disparity that exists between small and regional carriers and the big two. I agree with the 700 MHz alliance that the Commission should initiate a rule-making to investigate these practices, and the extent to which they will harm the competition. The Commission should not hesitate to exercise its authority to prohibit these arrangements when they are found to be contrary to the public interest. Further the Commission should stay all construction requirements for block A licensees until the Commission resolves the important issues raised by the petition. The FCC has long recognized the benefits of having robust competition in the wireless marketplace including low prices, new technologies, improved service quality, and choice among providers. However, these benefits will be lost, and competition for mobile broadband services will be sharply curtailed, if the nation's leading wireless carriers are allowed unfettered discretion to develop and market devices that have limited capability outside of their exclusive 700 MHz sub-bands. It is imperative for the Commission to exercise its power and grant the relief sought by the alliance. It is closing time and the night watch-man is jingling his keys.

Respectfully submitted,

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